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JUL 24 2013

Richard A. Harby
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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

2013 JUL 24 IN THE COURT OF COMMON PLEAS

COMMON PLEAS AND
GENERAL SESSIONS

Anderson County,

Plaintiff,

C.A. No. 09-CP-04-4482

vs.

Joey Preston and the South Carolina
Retirement System,

Defendants.

**PLAINTIFF ANDERSON COUNTY'S
REPLY IN SUPPORT OF ITS MOTION
TO ALTER OR AMEND JUDGMENT**

Plaintiff Anderson County respectfully submits this reply to Preston's Memorandum Opposing Plaintiff's Motion to Reconsider (hereinafter "Opposition" or "Opp.") dated July 16, 2013. While the arguments in the Opposition are generally insufficient to refute the points made in its Motion, the County will confine this Reply to the issue concerning the absence of a quorum when the Severance Package was approved, in light of the Court's ruling that four County Council members improperly voted on that package.

In its motion to alter or amend, Anderson County pointed out that its Code requires four members to be present to constitute a quorum and that numerous decisions of the South Carolina Supreme Court have recognized that "an interested director or committeeman cannot be counted in order to make a quorum to pass upon any matter in which such director or committeeman is interested." *Fidelity Fire Insurance Co. v. Harby*, 156 S.C. 238, 247, 153 S.E. 141, 144 (1930); *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 432, 453, 511 S.E.2d 48, 59 (1998) ("A member who recuses himself or is disqualified to participate in a matter due to a conflict of interest, bias, or other good cause may not be counted for purposes of a quorum at the

meeting where the board acts upon the matter.”); *Talbot v. James*, 259 S.C. 73, 82, 190 S.E.2d 759, 764 (1998) (officer or director of a corporation is ineligible to participate in corporate action “with respect to a transaction in which he has an interest adverse to the corporation” and “may not even be counted to make a quorum at a meeting where the matter is acted upon . . .”). This rule has been recognized in South Carolina since at least 1930, when the Supreme Court held:

A quorum is not present in passing upon a matter in which one of the directors is personally interested, where only a bare quorum is present when he is counted. And likewise an interested director or committeeman cannot be counted in order to make up a quorum to pass upon any matter in which such director or committeeman is interested.

Peurifoy v. Loyal, 154 S.C. 267, 238, 151 S.E. 579, 586 (1930).

Seeking to avoid the two conclusions that inescapably follow from application of these decisions – that if four votes were improper, the Severance Agreement was not approved by the necessary quorum and therefore must be invalidated – Preston offers numerous arguments, none of which holds up under scrutiny. Preston would have this Court reject binding South Carolina decisions and rely instead on inapplicable (and illogical) inferences from the South Carolina Freedom of Information Act (“FOIA”), a nonbinding advisory opinion of the State Ethics Commission, and a “heat of battle” conclusion by the County Attorney from four years ago.

1. Preston’s attempt to distinguish *Garris* and other decisions of the South Carolina Supreme Court fails.

Trying to limit the impact of *Garris*, Preston first accuses the County of “inexplicably omitt[ing]” the “most material” language from that decision. (Opp. at 9.) But the language that he asserts “sinks” the County’s argument merely recognizes that “[i]n the absence of any statutory or other controlling provision, the common-law rule that a majority of a whole board is necessary to constitute a quorum applies, and the board may do no valid act in the absence of a quorum.” *Garris*, 333 S.C. at 453, 511 S.E.2d at 59.

The County did not quote that language for the simple reason that there is no “statutory or other controlling provision” saying whether a member disqualified for bias counts towards the quorum. The authorities in South Carolina on that point are *Fidelity Fire, Garris, Talbot*, and *Peurifoy*; moreover, these decisions represent basic black letter law accepted across the country. *See, e.g.*, 56 AM. JUR. 2D *Municipal Corporations, Etc.* § 143 (“While a law on conflict of interest may leave quorum requirements undisturbed, recused members are not counted in determining the presence of a quorum, and action taken when, as a result, a quorum is not present, is invalid.”). Preston himself identifies no “statutory or other controlling provision” that contradicts the rule of *Garris*. Instead he points to the definition of quorum found in Anderson County Code § 2-37(d) and the definition of “quorum” found in the South Carolina Freedom of Information Act, neither of which addresses whether a member disqualified for bias counts toward the quorum.

Preston’s other attempts to limit and distinguish *Garris* likewise fail. He suggests that because the *Garris* court ultimately determined that a quorum was present under the facts of that case, the statement of black letter law it contains was only dicta in that “no occasion existed” for the court to determine “whether statutory or controlling provisions otherwise governed the entities involved” (Opp. at 18.) What Preston fails to note, however, is that the rule recognized in *Garris* was decisive in *Fidelity Fire*, *see* 156 S.C. at 247, 153 S.E. at 144, a decision he fails to address (or even mention) in his Opposition.

Preston further suggests that *Garris* is not controlling because it involved a governmental entity that “no longer exists.” (Opp. at 18.) This contention – that a decision with respect to any corporate or governmental entity would cease to have precedential value once the entity at issue ceased to exist – is obviously incorrect. *McCulloch v. Maryland*, 17 U.S. 316 (1819) remains

landmark precedent in the federal courts despite the fact that the Second Bank of the United States has long since ceased to exist.

Last, Preston argues that decisions like *Talbot* fail to “inform the discussion” because they involve a non-governmental entity. (Opp. at 9 & 17 n.9.) The courts draw no such distinction. In fact, the cases discussing this rule freely cite each other without mentioning any distinction as to the type of entity involved, and rely on decisions from both realms. *See, e.g., Garris*, 333 S.C. at 453, 511 S.E.2d at 59 (citing *Talbot*, which involved a non-governmental entity, and *King v. New Jersey Racing Comm’n*, 511 A.2d 615 (1986), which involved a state administrative agency, for the proposition that “[a] member who recuses himself or is disqualified . . . may not be counted for purposes of a quorum at the meeting . . .”).

2. FOIA does not support Preston’s argument.

Preston’s reliance on FOIA is misplaced. FOIA has nothing to say about what constitutes a quorum of County Council for purposes of conducting business, nor about whether a member disqualified for bias counts toward that quorum.

The purpose of FOIA is to ensure that “public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy.” S.C. Code Ann. § 30-4-10. For that reason FOIA requires, among other things, that meetings of public bodies be open to the public, *id.* § 30-4-60, that notice of meetings be provided to the public, *id.* § 30-4-80, and that the minutes of meetings of public bodies be made available, *id.* § 30-4-90. FOIA’s teeth, therefore, are in its definition of “meeting,” which FOIA defines as “the convening of a quorum of the constituent membership of a public body.” *Id.* § 30-4-20(d). The term “quorum,” in turn, is “a simple majority of the constituent membership of a public body.” *Id.* §

30-4-20(e). FOIA has nothing to say about whether an interested member disqualified for bias counts towards a quorum, nor does it say what constitutes a quorum for purposes of a governmental body's ability to act. In other words, a meeting of a public body or a committee might be required to be open to the public under FOIA, yet at the same time it could lack to the quorum required take a given action under the law establishing an governing that body.

Thus, FOIA neither expressly nor impliedly preempts a county from determining for itself what constitutes a quorum necessary for the county to take action. "Express preemption occurs when the General Assembly declares in express terms its intention to preclude local action in a given area." *South Carolina State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 397, 629 S.E.2d 624, 628 (2006). Implied preemption, in contrast, occurs "when the state statutory scheme so thoroughly and pervasively covers the subject so as to occupy the field or when the subject mandates statewide uniformity." *Id.*, 629 S.E.2d at 628. "[I]n order to pre-empt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002). FOIA defines "quorum" in order to say what types of meetings must be open to the public, not to preempt any other enactments that touch upon what constitutes a quorum. More to the point, the South Carolina Code expressly leaves to county councils the ability to "determine [their] own rules and order of business." S.C. Code Ann. § 4-9-110. FOIA does not "occupy the field" of quorum law. Preston's arguments based on FOIA have no merit.

3. The South Carolina Ethics Commission opinion is nonbinding and unpersuasive.

Preston's reliance on an opinion of the South Carolina Ethics Commission is also unavailing. He points to an advisory opinion from 1997 in which the Commission reasoned, partly on the basis of FOIA's definition of "quorum," that "disqualification under the Ethics

Reform Act does not affect the existence of a quorum.” See South Carolina Ethics Opinion, SEC AO98-002 at 4 (Nov. 19, 1997).

There are at least four reasons not to rely on this opinion. First, the Commission’s advisory opinion is not binding on this Court, but the Supreme Court’s decisions in *Fidelity Fire*, *Garris*, *Talbot*, and *Peurifoy* are. Second, the Ethics Commission reached its conclusion without any analysis of these binding Supreme Court decisions, and indeed without mentioning them. Third, the Commission’s decision is in conflict with other administrative decisions, notably various Attorney General Opinions, which recognize the *Fidelity Fire* line of cases and reach the exact opposite conclusion of the Ethics Commission. For example, the Attorney General has opined to the Director of the South Carolina Commission for the Blind that the Dean of the School of Ophthalmology at MUSC could serve on the Commission but “would be disqualified from voting on matters directly related to his School or the Medical University,” noting further that “[w]here one is disqualified, that person’s presence should not be counted to establish a quorum.” 1975 S.C. Op. Att’y Gen. No. 4018 (April 14, 1975) (Attached as Exhibit A).

4. The County is not estopped from asserting a lack of quorum by the statement of its county attorney.

Contrary to Preston’s suggestion, the County has not “interpreted and implemented its Code in the exact opposite manner than what it currently argues.” (Opp. at 13) What Preston points to is a County Council meeting on August 18, 2009. All seven members of the council were in attendance, but after two recused themselves from voting on two particular resolutions and two other members left the meeting with the intent of depriving the council of a quorum, the County Attorney was asked whether he had “any suggestions on” this “interesting position.” Minutes, 8/18/2009 County Council Meeting, at 13, ll. 15-16 (Attached as Exhibit B). After requesting “a minute” to “hit the books,” the County Attorney told the Council that based on his

review of the County Code, as long as the two members who recused themselves returned, “I think that we would have a quorum of the council at that point and then it would require a majority of those members present and voting” to pass the item in question.¹ *Id.* at 13, ll. 38-43.

This exchange does not forever “estop” the County for numerous reasons. It was not an “official position” of the County and it was not taken in this case. The conditions for estoppel simply are not met.

Instead, the County Attorney was required to render an instant opinion, and he did so. Moreover – as we have noted above – the County Attorney was correct that the Anderson County Code does not address whether a Council member disqualified for bias counts toward a quorum. The fact that the County Attorney did not locate the governing cases under the circumstances does not reflect poorly on him – and it certainly does not render those cases inapplicable here.

Besides that, the circumstances at the August 18, 2009 meeting were different from those presented by the approval of Preston’s Severance Package. In the latter case, this Court has held that four votes were improperly cast. By contrast, at the August 18 meeting, only two members had a conflict of interest. The other two members tried to leave the meeting to thwart a vote; they were not disqualified for bias. And those two members actually returned and voted. *Id.* at 17, ll. 1-12; 20, ll. 28-36. Both resolutions passed by a vote of 3-2. *Id.* at 17, l. 13; 20, ll. 28-36. Thus, even under *Fidelity Fire*, *Talbot*, *Peurifoy*, and *Garris*, a quorum was present.

Preston’s accusation that the County has “interpreted and implemented its Code” in the “exact opposite manner” is incorrect and beside the point. The hurried ruling by the County Attorney – that eventually was not even acted upon – does not forever bind the County.

¹ We agree with Preston (Opp. at 14, n.8) that the phrase “for the establishment of a quorum” at that point appears to have been a misstatement by the County Attorney.

5. The “Rule of Necessity” does not apply to these facts.

Preston also argues in a lengthy footnote and elsewhere that the “Rule of Necessity” might validate the vote on the Severance Package even if this Court accepts the County’s argument that no quorum was present. But that argument relies on several misunderstandings about the use and application of the Rule. (Opp. at 13 n.6).

The County has discovered no South Carolina case adopting the Rule of Necessity. Those states that do apply the Rule subject it to numerous safeguards given the potential for abuse. One treatise explains the parameters:

There is authority that under the rule of necessity, if a quorum is no longer available when conflicted members are excluded, the minimum necessary number of members with a conflict may participate, when necessary to fulfill the council's essential functions, with drawing lots or some other impartial method employed to select them.

56 AM. JUR. 2D, *Municipal Corporations, Etc.* § 143. A leading authority on the law of municipal corporations agrees:

Under the rule of necessity, if a quorum is no longer available when conflicted members are excluded from a government body, the minimum necessary number of conflicted members may participate to carry out the government body’s essential functions, with drawing lots or some other impartial method employed to select them.

4 MCQUILLIN, *The Law of Municipal Corporations* § 13:48. The New Jersey courts have explained in more detail when the “essential functions” of a governmental body would allow a disqualified member to participate, making clear that if a proposed act could be delayed until a quorum of disinterested persons could be attained, recourse to the rule is inappropriate:

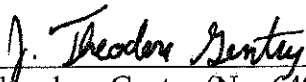
[T]he doctrine of necessity can only be applied in instances of *stern necessity*, that is, where actions cannot be laid aside until a later date when the body could obtain a quorum of members who do not have a conflict with respect to the issues involved.

Allen v. Toms River Reg'l Bd. of Educ., 559 A.2d 883, 887 (Ch. Div. 1989) (emphasis added).

Even assuming, therefore, that the Rule of Necessity would be recognized in South Carolina, it cannot operate now to validate the Council's vote on the Severance Package. First, the Rule recognizes that a quorum must be present for a governmental body to take action. It does not operate retroactively to validate a vote where no quorum was present. Second, recourse to the Rule might have allowed *one* disqualified member to vote on the Severance Package, but that member would have needed to have been chosen by lot, and no such process occurred. Last, the vote on the Severance Package was not an "essential function" of the Anderson County Council that could not have been laid aside until a quorum of members who did not have a conflict could have voted on the matter. As this Court is aware, the vote on the Severance Package took place on the very eve of a new Council's taking office. That Council could have considered the matter with a quorum of members who did not have a conflict. Preston's attempted justification of the 3-0 vote of the Council based on the Rule of Necessity fails.

For the reasons set forth in its Motion to Alter or Amend Judgment and in this memorandum, Anderson County respectfully requests that this Court alter or amend the May 3, 2013 Final Order and Judgment to rescind the Severance Package and provide Anderson County the appropriate relief.

Respectfully submitted,



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July 24, 2013

Attorneys for Plaintiff Anderson County

1975 S.C. Op. Atty. Gen. 89 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4018, 1975 WL 22315

Office of the Attorney General

State of South Carolina

Opinion No. 4018

April 14, 1975

***1 Re: The Parent of a Blind Child and the Dean of the School of Ophthalmology may serve on the South Carolina Commission for the Blind**

Mr. Henry Watts
Executive Director
S. C. Commission for the Blind
P. O. Box 11638, Capitol Station
Columbia, South Carolina 29211

Dear Mr. Watts:

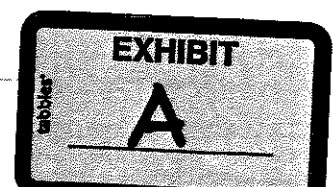
You inquired whether certain individuals may be appointed and serve on the South Carolina Commission for the Blind without having a disqualifying conflict of interest specifically the parent of a blind child receiving the services of the Commission and the Dean of the School of Ophthalmologist Medical University of South Carolina. I submit that there is no inherent conflict of interest in either case to prevent such an appointment.

Absent legislation, the nature of the interest involved must be examined in light of the common law. The general rule of the Common Law has been to identify a pecuniary interest in conflict with that of the public. Octanto County v. Hall, 2 N.W. 291 (Wisconsin 1879). This has been more particularly defined to mean contractual relationships where the public officer becomes both the employer and the employee. Snipes v. City of Winston, 35 S.E. 610 North Carolina 1900). Indeed previous opinions from this office and the South Carolina cases on point have all been concerned with a public officer cast in the dual role of master and servant. See Duncan v. Charleston, 60 S.C. 532, 558 (1910), where it was held that City Council members could not contract with a corporation in which they were stockholders; see also McMahan v. Jones, 94 S.C. 362 (1913) which was discussed in a January 24, 1974 opinion to your predecessor, Fred L. Crawford, holding that a member of the Commission could not contract with the Commission.

Yet where a contractual or Master-servant situation has not been at issue, cases have found no disqualifying conflict of interest. In Erie City v. Grant, 24 Pa Supreme Court 109, 133 ALR 1261, the Court found that public policy was not violated by City councilmen voting on a general Tax levy which personally affected them as real property owners.

Additionally, it should be noted that analogy to other governmental bodies may be drawn in both instances of the question you have presented. It would be difficult to say that the parent of a blind child is disqualified from serving on the Commission for the Blind, while the parents of mentally retarded children in the custody of the Department of Mental Retardation are allowed to serve on that department's government board. Similarly, parents of school children serve on School Boards without the issue being raised. The Dean of the School of Ophthalmology of the Medical University would have no greater conflict of interest by serving on the Commission for the Blind, than does the President of Clemson University who serves on the Forestry Commission.

Therefore, this office finds that the nature of the interests involved of the parent of a blind child, and of the Dean of the School of Ophthalmology are not such to disqualify either from appointment to the South Carolina Commission for the Blind. However, both may be disqualified from voting on certain issues, to which I now turn.



*2 It is helpful to distinguish whether the particular issue before a governmental board is legislative or judicial in nature. Issues that are legislative concern general rules of conduct or policy matters. Whereas, acts that are judicial impose a burden or confer a privilege in a specific case. Judicial Acts therefore require the disqualification of one affected personally, 133 ALR 1260. Thus, a parent of a blind child could vote on general policy matters affecting services to blind children, but could not vote on a matter affecting his or her child alone. Similarly, the Dean of the School of Ophthalmology would be disqualified from voting on matters directly related to his School or the Medical University, but could vote on matters affecting Ophthalmologists in general. Where one is disqualified, that person's presence should not be counted to establish a QUORUM. Fidelity Fire Insurance Co. v. Harby, 219 S.C. 186 (1951).

Finally, I would point out that if the Dean of the School of Ophthalmology were to be appointed and accept a position on the Commission, he would be barred from receiving payment for any services he were later to perform for the Commission being limited to the usual mileage, subsistence, and per diem, as authorized for members of Commissions. This prohibition would extend to honorariums for addresses, and examination fees.

I trust that this answers your inquiry. Please feel free to correspond should you have any questions.

With best wishes, I am
Very truly yours,

Harry B. Burchstead, Jr.
Staff Attorney

1975 S.C. Op. Atty. Gen. 89 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4018, 1975 WL 22315

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Anderson County Council

Anderson, South Carolina

Regular Meeting – August 18, 2009 – 6:00 p.m.

MINUTES

All area newspapers, radio stations and television stations were informed of the meeting in compliance with the guidelines set forth in the *Freedom of Information Act*.

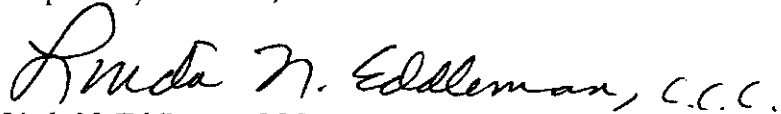
PRESENT:

Chairman Eddie Moore, Presiding
Bob Waldrep – District #1
Gracie S. Floyd – District #2
Vice Chairman Tom Allen – District #4
Tommy Dunn – District #5
Ron Wilson – District #6
M. Cindy Wilson – District #7
Rusty Burns – Interim County Administrator
Mike Pitts – County Attorney
Linda N. Eddleman – Clerk to Council

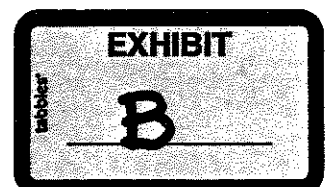
A verbatim transcript of the meeting is hereto attached for your approval.

The meeting adjourned at 7:55 p.m.

Respectfully submitted,



Linda N. Eddleman, CCC
Clerk to County Council



State of South Carolina)
County of Anderson)

ANDERSON COUNTY COUNCIL MEETING

August 18, 2009

IN ATTENDANCE:

EDDIE MOORE, CHAIRMAN
BOB WALDREP
TOMMY DUNN
GRACIE FLOYD
TOM ALLEN
CINDY WILSON
RON WILSON

1 EDDIE MOORE: ... 18th meeting is now
2 called to order. We'll now have the Invocation and
3 Pledge of Allegiance by the Young Marines. Come
4 forward.

5 GRACIE FLOYD: Mr. Chairman, please. It's
6 my turn to say the prayer and you told me that we had
7 to say it ourselves. So we have already set this up if
8 you don't mind following the procedure that we, we
9 have.

10 EDDIE MOORE: Go ahead.

11 GRACIE FLOYD: Okay. Please stand for the
12 prayer and please remain standing until the Young
13 Marines has presented the colors. Please go with me
14 now to your God as I go to mine. Thank you. Thank
15 you, Father God. Thank you. The Young Marines will
16 now present the colors.

17 PRESENTATION OF COLORS AND PLEDGE OF ALLEGIANCE
18 BY YOUNG MARINES

19 MALE: (Inaudible.)

20 MALE: I would like to thank
21 everyone on council at this, at this time. Young
22 Marines program is sponsored by the Marine Corp and by
23 the Marine Corp B. It is a program for kids eight to
24 eighteen. What we do is a drug reduction program to
25 try to keep the kids informed on what -- how to stay
26 out of trouble. Leadership. Our future is standing
27 here with us. If we don't support them now they will
28 be out on the streets in gangs. What we try to do is
29 give them a structured program. We have a lot of
30 things that -- to offer them. We offer them trips. We
31 offer base academy, aviation ground school, and other
32 things they come into when they -- as they progress
33 through the program. A lot of these kids have been in
34 it a year. Some a little bit less. We're already
35 having rank in our fitness. Like Perry said, we just
36 got back from Parris Island where these kids learned a
37 lot about respect and how to work as a team. It was a
38 frightening thing for them when they first got there.
39 After a couple of hours with the drill instructor, who
40 was a real drill instructor who has a platoon going on
41 at this time. They also got to go down a forty-seven
42 foot fall rappelling. I'm sure they were scared when
43 they started, but all of them went down at least twice.
44 That's an encouragement. Not very many people ever get
45 to go down that wall. These kids have already
46 accomplished that. They're on their way now to being
47 leaders in our community. And all we ask, you know, is
48 to sponsor them. And we are fixing to have a new boot
49 camp starting September the 15th. I'm sorry September
50 the 5th. We're also going to have the exercising and

1 introduction to the program the 29th of August at the
2 Guard's Meeting Place. If you need any information on
3 it see one these, one of these folks in the yellow tee
4 shirts or one of the Young Marines and we'll get you
5 there. Anyone have any questions? I thank you again.
6 BOB WALDREP: Mr. Chairman.
7 EDDIE MOORE: Mr. Waldrep.
8 BOB WALDREP: I would move to recuse
9 myself from voting on Items 7(a) and 7(b) in the
10 Resolutions.
11 EDDIE MOORE: Thank you, Mr. Waldrep. I
12 also intend on recusing myself on 7(a) and (b) also.
13 With that said we will go to Item 3, the approval of
14 minutes. Item (a) July 21st minutes. Do we have any
15 revisions or corrections to the minutes?
16 TOMMY DUNN: I make a motion we accept.
17 RON WILSON: Second.
18 EDDIE MOORE: I have a motion and second.
19 Discussion? All in favor raise your right hand.
20 GRACIE FLOYD: Yes. Yes. I have a
21 discussion concerning the minutes.
22 EDDIE MOORE: Okay.
23 GRACIE FLOYD: Thank you. Did we do both
24 of them at the same time this time?
25 EDDIE MOORE: 21st. We're doing the 21st.
26 GRACIE FLOYD: Okay. All right. There
27 were some errors in the -- typographical errors in July
28 21st regular meeting. Thank you.
29 EDDIE MOORE: Any other discussion? All
30 in favor raise your right hand. Unanimous. Now go to
31 (b) which will be July 24th, the work session. We have
32 a motion to approve. Do I have a ---
33 TOMMY DUNN: Second.
34 EDDIE MOORE: I have a second. Any
35 discussion?
36 GRACIE FLOYD: Yes.
37 EDDIE MOORE: Ms. Floyd.
38 GRACIE FLOYD: On July 24th, 2009 it --
39 first of all there's a discrepancy on whether it was a
40 workshop as it said on the first page or whether it was
41 a special called meeting as it says on the second page.
42 The two are different things. Also information was
43 left out of the minutes. The conversation that you and
44 I had where you told me that I could not send a letter
45 down to the people in Columbia to the National Guard.
46 You said I couldn't do that. That was a job of the
47 administrator. That was left out. And when I told you
48 that Ms. Wilson -- that the council member from
49 District Seven did it and she was a -- just a council
50 person as I was and that if she could do it I had the

1 right to do it as well. All that was left out the
2 minutes. Thank you.

3 EDDIE MOORE: Any other? All in favor
4 raise your right hand. All opposed. Abstained. Let
5 it be shown that Mr. Wilson, Mr. Allen, Mr. Moore, Mr.
6 Dunn, Mr. Waldrep and Ms. Wilson voted for. Ms. Floyd
7 abstained. We now go to Item 4, citizen comments
8 agenda matters.

9 MIKE PITTS: Mr. Chairman, we have three
10 citizens signed up tonight. The first is Rick
11 Freemantle.

12 RICK FREEMANTLE: Good evening, Mr. Chairman,
13 Council. I'll be brief. Basically I would just like
14 to stand in support of 2009-062. I think that's a
15 great investment. I'm kind of looking forward to
16 hearing about their results and hoping maybe they'll
17 get them back and soon we could name like October or
18 November Orange month. You know kind of give a special
19 interest to that color. I think a lot of folks are
20 going to look good in that color myself. 063. I also
21 want to throw my support behind this. I think it's
22 very sad and unfortunate that we had two council people
23 with a good moral background. Their concern and their
24 care for the citizens of this county that actually had
25 to go to court and fight a majority of council. People
26 who swore an oath to preserve, protect and defend the
27 constitution of this United States. Yet they were
28 blinded by an open and honest government. They didn't
29 want that to be anywhere around. They didn't want us
30 to know what was going on in this county because they
31 knew it meant their certain demise. They got it
32 anyways during the primaries last year and they're
33 still sitting around waiting to reap their rewards.
34 They can stir the water all they want but the train is
35 on the track. It's moving towards them and their pay
36 day is coming. So I'm all for Mr. Waldrep being
37 reimbursed and I hope that when we get that 1.14
38 million dollars back I would like to reiterate some
39 comments made in earlier meetings that Ms. Cindy Wilson
40 also be repaid. This woman has truly pledged her
41 honor, her fortune and her life to represent the people
42 of this county and she deserves our utmost respect.
43 Thank you, Mr. Chairman.

44 MIKE PITTS: Next is Mark Powell.

45 MARK POWELL: Mark Powell, District
46 Seven. I too would like to say I appreciate the fact
47 that the council members in the last two years leading
48 up to this past seven months put their heads out on the
49 chopping block and literally had them chopped off
50 financially. And I appreciate the fact that you guys

1 are going back to try to retro act and fix that. I
2 would like to think that some day any one in this room
3 who wants to sit up there before you who asks for
4 information from this body. There again look at the
5 flow chart from Anderson County. It clearly shows us,
6 we the people in this room as being the boss. We're on
7 top. Under that all you guys. You're under us.
8 You're working for us. And while working for us, if
9 you're trying to ask for information on how our monies
10 were being spent you should have been allowed to get
11 it. Five other people shouldn't have been allowed to
12 say no. The majority of the council don't give a rip
13 on how our money is being spent. You two can just
14 stick it. Well you stuck it out for long enough and we
15 hope that this thing works out. Get reimbursed for all
16 the money that you spent on our behalf. Because there
17 again, we're your boss. You're working for us. We
18 appreciate it. Thank you.

19 MIKE PITTS: Last is Elizabeth Fant.

20 EDDIE MOORE: Not here? Okay.

21 MIKE PITTS: That's everyone that signed
22 up, Mr. Chairman.

23 EDDIE MOORE: We now go to Item 5 on
24 the agenda. Ms. Floyd.

25 GRACIE FLOYD: Thank you. What I'm going
26 to do now is what I do every year when I return home
27 from the meeting at Hilton, Hilton Head. It was a
28 very, very good meeting this year. All of them are
29 good, but this year was particularly helpful to us. I
30 learned some things that I want to bring back to
31 Anderson to make you aware of them. We did the, we did
32 the Mitchell Graham Award on Thursday. On Thursday.
33 There were a lot of good presentations made. There was
34 one in particular that I really liked and that was over
35 in Pickens County, I believe it is, where they are
36 turning used oil into fuel. They have said that they
37 have saved a lot of money. I talked with people about
38 that. They are the only one they say in the state
39 that, that's doing this. And it's a, it's a worthwhile
40 project for Anderson County to investigate to see if we
41 too can save some costs on the gas price. Also from
42 Pickens County came a program where they call it
43 derelict mobile home amnesty. This is where Pickens
44 County initiated a one year amnesty program to assist
45 county residents in the removal of rundown mobile
46 homes. The programs -- the program offers the, the
47 people free removal and mobile -- a mobile home as a
48 cost saving incentive. This is something that I think
49 that we ought to look into because it -- the Anderson
50 -- Pickens County said the owners may dispose of the

1 mobile home free of charge at the county landfill. Now
2 I'm sure that you know that we have mobile homes all
3 around us that, that are in habit -- uninhabited. They
4 are run down. The windows are broken and we wait and
5 we wait to have somebody come and move these, these
6 homes and it's not happening. So I think this would be
7 a good idea for Anderson County to also look into
8 taking a page out of Pickens County's book to see if we
9 could kind of do the same thing to straighten up our,
10 our area. Also while there I talked with a group of
11 representatives. We had a panel discussion and I stood
12 and asked a question of the illegal immigrants and how
13 will Anderson -- how will South Carolina control. That
14 we needed help from the state in controlling the people
15 who are coming in as far as being here illegally.
16 There were about eight or nine members up there and not
17 a one would answer the question. One man answered the
18 question that we were finished with. He went back and
19 answered another question. So it's all over the state.
20 We got no -- I got no answer at all. Afterwards we had
21 several people coming up wanting to know the same
22 answer to the same questions. And this is something
23 that they have vowed that they would be working on in
24 their area as well. Also I talked to several people
25 there about something that's coming up this year that
26 we, Anderson County, will need to be a part of and
27 that's the census. I'm going to talk about that later
28 on in the meeting. But we have to get ourselves ready
29 for the census. I talked to some folks about economic
30 development. About coming to Anderson to get some
31 things going on here. And believe it or not I have two
32 maybe three that will be coming to look at what we have
33 to offer. Mr. Burns, we don't have an economic
34 development department or director anymore so until we
35 get one I'll do my thing. But anyway these people will
36 be coming to Anderson to take a look. Also I met with
37 some housing people there. And they too are interested
38 in coming. Well one is interested in coming back to
39 Anderson County to, to let's look at some more housing
40 that we can do. And that's a good thing. As well as
41 trying to get some of these tracts ready for, for
42 people who are interested in coming down here. Okay.
43 I, I talked to several house members because they were
44 loaded down there. They were everywhere down there.
45 This is the first year at the conference that we have
46 had so many people from the House and the Senate in --
47 at Hilton Head to talk to us. And we got a lot done. I
48 found out some information that I can use and I also
49 found out some information that we can use as far as
50 our organizations are concerned. It's called the South

1 Carolina survey. Maybe many of you don't know about it
2 but there is a survey that you can, can be a -- that
3 your organization can get to be a part of through South
4 Carolina. I brought the information back
5 with me. So if you're interested or if you have a need
6 to get information to help you with your grant writing
7 or to help you plan, then please see me because I do
8 have the information on how you can get in touch with
9 these people in Columbia through South Carolina that
10 will help us find these things. Okay. And I've had a
11 meeting in the hallway about the presidential report
12 here. This was a good piece of, of work done here as
13 well as the book here that I have here that show all of
14 the model practices in South Carolina that we may like
15 to look at. All in all it was a good meeting. I
16 arrived at -- I arrived on Tuesday late. Drove all the
17 way by myself. No, I had someone in the car with me,
18 but I drove. And I hit the ground running on Wednesday
19 morning because that was the first day of my class.
20 Wednesday morning. So -- and I went until even after
21 the rest of them had gone home, I was still working
22 because I had a meeting at ten o'clock. Other things
23 happen at the meeting. Things I just don't wish -- I
24 don't wish to just even, even discuss now because it
25 was so embarrassing for Anderson County. But all in
26 all it was a very, very good meeting. And Anderson
27 County, I thank you for allowing me to go. You're
28 welcome.

29 EDDIE MOORE: All right. We'll now go to
30 Item 6 on the agenda the second reading on Orion Rugs.
31 The public hearing. There'll be no time limit. The
32 public hearing is now open. Hearing none or seeing
33 none, the public hearing is now closed.

34 TOMMY DUNN: Mr. Chairman, I make the
35 motion we'll adopt this ordinance on second reading.

36 BOB WALDREP: Second.

37 EDDIE MOORE: I have a motion on the floor
38 to adopt and I have a second. Any discussion? All in
39 favor raise your right hand. Unanimous. Item passes.
40 We now go to Item 7 on the agenda, the resolutions.
41 And I'm going to turn the chairmanship over to Mr.
42 Allen for the first -- for (a) and (b) and Mr. Waldrep
43 and myself will recuse ourselves for those two items.

44 TOM ALLEN: All right. Let's go ahead
45 with the first resolution. That would be Resolution
46 2009-62 and it reads as follows: A resolution
47 authorizing and ratifying the retention and payment of
48 both the Tallon Group, Incorporated and Palmetto
49 Investigative and Consulting Services, Incorporated,
50 and matters related thereto.

1 Whereas, Anderson County, Edwin E. Moore and
2 Robert E. Waldrep, Jr. are currently defendants in
3 lawsuit styled Jones versus Anderson County and others,
4 Number 2009-CP-04-2100;

5 Whereas, the law firm of Nexsen Pruet LLC
6 represents Anderson County Council as the special legal
7 and investigative counsel for Anderson County Council
8 in connection with an investigation into business and
9 financial affairs of Anderson County and also serves as
10 the county attorney for Anderson County;

11 Whereas, the Jones lawsuit challenges the
12 obtaining of investigative services by Nexsen Pruet LLC
13 in order to assist in the investigation;

14 Whereas, Anderson County Council in fact has
15 authorized Nexsen Pruet LLC to obtain such services in
16 connection with the investigation and otherwise the
17 Anderson County Council considers the obtaining of
18 these services to be within the scope of the
19 representation by Nexsen Pruet LLC of Anderson County
20 Council as the special legal and investigation counsel
21 for Anderson County Council and of Anderson County as
22 the county attorney for Anderson County;

23 Whereas, the County and Messrs. Waldrep and
24 Moore are confident in their legal position and are
25 defending the Jones lawsuit with vigor;

26 Whereas, in order to reaffirm its legal
27 position in the Jones case Anderson County Council
28 desires to approve and ratify, number one, the
29 retention of the Tallon Group, Incorporated and, number
30 two, the payment by the County for services rendered by
31 the Tallon Group, Incorporated to date;

32 Whereas, Anderson County Council further
33 desires to approve the retention of Palmetto
34 Investigative and Consulting Services, Incorporated by
35 Nexsen Pruet LLC as an additional consultant to assist
36 in the investigation currently being conducted;

37 Whereas, Anderson County Council further
38 desires to approve the payment by the county for all
39 services rendered by the Tallon Group, Incorporated and
40 Palmetto Investigative and Consulting Services,
41 Incorporated in connection with the aforementioned
42 investigation on a going forward basis; and

43 Whereas, Anderson County Council desires to
44 reaffirm that Nexsen Pruet LLC is authorized to obtain
45 investigative services to assist in the investigation.

46 Now, therefore, it is hereby resolved by
47 Anderson County Council that,

48 Anderson County Council hereby reaffirms that
49 the obtaining of investigative services by Nexsen
50 Pruet, LLC in connection with the investigation of

1 business and financial affairs of Anderson County is
2 within the scope of the representation of Anderson
3 County Council by Nexsen Pruet, LLC as special legal
4 and investigative counsel for Anderson County Council
5 and within the scope of the representation of Anderson
6 County by Nexsen Pruet LLC as county attorney.
7 Anderson County Council hereby approves and ratifies
8 the hiring of Nexsen Pruet, LLC of both the Tallon
9 Group, Incorporated and Palmetto Investigative and
10 Consulting Services, Incorporated as consultants to
11 assist in the investigation currently being conducted
12 by Nexsen Pruet, LLC as the request -- at the request
13 of Anderson County Council. Anderson County Council
14 hereby approves and ratifies the payment by Anderson
15 County of any fees incurred to date for services
16 rendered by the Tallon Group. Anderson County Council
17 hereby approves on a going forward basis the payment by
18 Anderson County of all fees incurred for services
19 rendered by both the Tallon Group, Incorporated and
20 Palmetto Investigative and Consulting Services,
21 Incorporated in connection with the investigation and
22 as directed by Nexsen Pruet, LLC. This resolution
23 shall take effect and be in force immediately upon
24 enactment.

25 Resolved in meeting duly assembled this 18th
26 day of August, 2009.

27 Is there a motion to accept this resolution?

28 CINDY WILSON: So moved.

29 TOMMY DUNN: Second.

30 TOM ALLEN: Is there any discussion?

31 Yes, ma'am.

32 GRACIE FLOYD: Mr. Allen, please clarify,
33 clarify for me who is the client of the investigators?

34 TOM ALLEN: For me that, that will be
35 easy to do because I'm going to defer that to Mr.
36 Pitts, our attorney, who can explain the legalese.

37 MIKE PITTS: That would be the County
38 Council retained Nexsen Pruet, my law firm, as the
39 special investigative counsel to do the investigation
40 that has been ongoing. And Nexsen Pruet in turn ...

41 RON WILSON: Is your mike on?

42 MIKE PITTS: Is that better? Thank you,
43 sir. Nexsen Pruet in turn retained both the Tallon
44 Group and Palmetto to serve in a consulting capacity to
45 assist with that investigation.

46 GRACIE FLOYD: Thank you. Some more
47 questions. Sir, if Nexsen Pruet obtained the Palmetto
48 Investigative group who -- to do some investigation why
49 is Anderson County paying them? Why not Nexsen Pruet?
50 That's your cost. Why, why are we going to have to pay

1 them?

2 MIKE PITTS: It's, it's certainly
3 customary in any kind of legal situation where if
4 outside expertise is required to assist the law firm
5 the law firm engages that expertise but the, the client
6 ultimately pays for it. And that's the -- that's no
7 different than the situation we have here.

8 GRACIE FLOYD: Okay. The, the PI people,
9 Palmetto Investigative, they have been doing this for a
10 long time. They have been doing this investigation for
11 a long time without the consent, authority and the
12 written authority of Anderson County, just Nexsen
13 Pruet. Because we're just now doing this.

14 MIKE PITTS: Well I think it's -- it
15 certainly would be implicit in the retention by my law
16 firm to serve as the special investigative counsel that
17 we would be given whatever resources we needed to have
18 to do the investigation properly.

19 GRACIE FLOYD: Okay. You said a whole lot
20 of beautiful words. Okay. But my question is still
21 this, if you hired them and you went out on your own
22 and you hired them without our, without our consent or
23 without a vote from County, from County Council, why
24 are we having to pay them? Now I can see us paying
25 them tomorrow morning if they vote on this, but I
26 cannot see us paying them from where they started all
27 the way to today because I didn't vote on this. I had
28 no voice in this and I am a sitting council member.

29 MIKE PITTS: Again ma'am, the only answer
30 I can give you is that their services were required in
31 connection with the investigation. We -- the, the law
32 firm was retained to do that investigation and made the
33 decision that additional resources and expertise were
34 required and went out and got that and that's not, that
35 is not an unusual situation in any sort of legal
36 retention.

37 GRACIE FLOYD: The Tallon Group and the
38 Palmetto Investigative Services have a contract with
39 whom?

40 MIKE PITTS: They were retained by Nexsen
41 Pruet.

42 GRACIE FLOYD: But they have their contract
43 with you.

44 MIKE PITTS: With my law firm.

45 GRACIE FLOYD: Well with your law firm.

46 MIKE PITTS: Not me but the law firm.

47 GRACIE FLOYD: Okay. We -- yeah, with your
48 law firm.

49 MIKE PITTS: Correct.

50 GRACIE FLOYD: So yet we still have to pay

1 them. Okay. And who do these people report to day to
2 day?

3 MIKE PITTS: They report to the law firm.

4 GRACIE FLOYD: Okay. So you went out and
5 hired them. They report to you. You have a contract
6 with them because we hired you to do something under
7 contract with us. And you went out and hired some more
8 people to do something for you and the taxpayers got to
9 pay for it. Thank you.

10 TOM ALLEN: Thank you, Ms. Floyd. Is
11 there any further discussion?

12 RON WILSON: Yes, sir.

13 TOM ALLEN: Yes, Ron. Go ahead, Mr.
14 Wilson.

15 RON WILSON: Let me ask you, how have
16 they been paid up to now? Or have they been paid?

17 MIKE PITTS: I have no -- the Tallon
18 Group I know has been paid -- has submitted an invoice
19 that's been paid. I believe -- I don't know if any
20 additional invoices have been paid or not. I honestly
21 don't know the answer to that one.

22 RON WILSON: I mean how is this being
23 paid with taxpayer money when we haven't voted on it?

24 MIKE PITTS: Sir, again, I believe it's
25 in -- it certainly is part of and within the scope of
26 our retention as the, as the counsel for the
27 investigation -- running the investigation that if we
28 make the decision that additional outside help is
29 needed that we can -- that we have the power to go out
30 there and get that help.

31 RON WILSON: Well, ---

32 MIKE PITTS: And also it arguably falls
33 within the power that we have as the county attorney.

34 RON WILSON: The -- this council has paid
35 more attention to how money is spent than perhaps
36 others. So my question is how did we manage to get
37 this bill run up without any of us voting on it? And
38 why has it been paid?

39 MIKE PITTS: Well again, sir, the
40 county's position is that it was part and part -- it
41 was part of the investigation. It was a service that
42 we needed.

43 RON WILSON: If, if that's -- what you
44 say is true why are we required to do this now after
45 it's been done?

46 MIKE PITTS: Well I don't think we're
47 required to do it. I think that -- and obviously this
48 is the subject of a lawsuit that's pending in court
49 right now.

50 RON WILSON: What lawsuit is that?

1 MIKE PITTS: Jones lawsuit. So it's part
2 -- and that is the thrust of the lawsuit is that
3 council did not formally approve the retention or the
4 payment for these consulting services.

5 RON WILSON: So we're asked here to shut
6 the barn door after the horse, is out is that the deal?

7 MIKE PITTS: No, sir. I don't believe
8 so. I believe that the county, the county still is on
9 solid ground legally and this would just simply provide
10 it with additional grounds to use in defending the
11 lawsuit.

12 RON WILSON: Why do we need to do this if
13 what we've done is okay?

14 MIKE PITTS: Because it's, it's putting
15 the county in the best possible position it can be in
16 in defending the lawsuit.

17 RON WILSON: Why wasn't we asked to do
18 this earlier?

19 MIKE PITTS: Well the lawsuit was
20 recently -- was filed in late June. There was a motion
21 to dismiss that's pending before the court. I don't
22 know for sure when that will actually come up for a
23 hearing, but it could be any time now. And that was --
24 that is the basis for the resolution. It's -- again,
25 the purpose of it is to try to put the county in the
26 best possible legal position it can be in. We feel
27 confident in the, in the position that we have
28 currently. Lawyers with the Wyche law firm are
29 defending the county and this is simply just bolstering
30 what we already believe to be a strong defense.

31 RON WILSON: But we evidently feel we're
32 not as strong as we'd be without this being passed.

33 MIKE PITTS: I don't know why you
34 wouldn't ever try and be proactive and take steps to
35 strengthen a position even if it -- even if you're
36 already supremely confident in it. This is simply just
37 a step to further strengthen if the council is so
38 inclined to vote for it.

39 RON WILSON: Well we're into spending a
40 lot of money on a lot of things on this council and no
41 money on other things. Whatever suits this group. And
42 we don't have very many things we can do as a loyal
43 opposition to this. Except I'm about to do one of
44 them. I'm fixing to get up and leave this place. And
45 see if I can deny this body a quorum. Because what
46 we're doing here is wrong.

47 CINDY WILSON: Mr. Chairman, may I ask a
48 question please?

49 APPLAUSE

50 TOM ALLEN: Yes, Ms. Wilson.

1 CINDY WILSON: I was wanting to ask a
2 question of the two folks who just left. I wondered
3 who gave the councilman permission to form an agreement
4 with a hired attorney without knowledge and without a
5 vote by council which is the subject of a great deal of
6 this investigation?

7 TOM ALLEN: I'm not sure I understood
8 exactly what --

9 CINDY WILSON: Well it goes back to
10 November 18th, the actions of that night ---

11 TOM ALLEN: Oh, okay. All right.

12 CINDY WILSON: -- taken by former members
13 of this body and current members of this body.

14 TOM ALLEN: All right. Thank you. Any
15 other comments? We're now in an interesting position.
16 Mr. Attorney, do you have any suggestions on ---

17 MIKE PITTS: If I could have a few
18 minutes. This is unique situation. I'll just need to
19 hit the books for a minute.

20 TOM ALLEN: All right.

21 MIKE PITTS: Thank you.

22 TOM ALLEN: Yes. Go ahead, Mr. Dunn.

23 TOMMY DUNN: I request us to take about
24 a five minute recess.

25 CINDY WILSON: Second.

26 TOM ALLEN: Approved. Five minute
27 recess.

28 END OF TAPE ONE, SIDE ONE

29 TOM ALLEN: We're now calling this
30 session of Anderson County Council back into session.
31 I'll defer to Mr. Pitts for a few minutes to explain
32 exactly what will be happening next.

33 MIKE PITTS: Thank you, sir. Under the
34 County Code it defines a quorum as those members -- it
35 requires a majority of the council members to be
36 present for there to be a quorum. And that does not
37 necessarily mean that if we were to take a vote on
38 this, on this resolution, Mr., Mr. Waldrep and Mr.
39 Moore could certainly still be present and simply
40 abstain from voting. So I think that we would have a
41 quorum of council at that point and then it would
42 require a majority of those members present and voting
43 for the establishment of the quorum.

44 TOM ALLEN: All right. Thank you.

45 GRACIE FLOYD: Mr. Chairman.

46 TOM ALLEN: Yes, ma'am.

47 GRACIE FLOYD: Okay. During the break I
48 was not told that there was going to be a meeting in
49 the back. You had a quorum in that meeting in the
50 back. I was not there. Were you there? Now we

1 weren't, we weren't told there was going -- a meeting
2 -- that y'all were going to meet in the back nor were
3 we a part of it.

4 TOM ALLEN: We didn't, we didn't have
5 a quorum.

6 TOMMY DUNN: Mr. Chairman. Mr. Chairman.

7 TOM ALLEN: Go ahead, Mr. Dunn.

8 TOMMY DUNN: I believe if Mr. Pitts will
9 check or something, time has got to have expired on
10 this matter. We need to vote and get on.

11 GRACIE FLOYD: No, we don't. We need to
12 discuss this because this is an important matter. It
13 concerns the dollars ---

14 TOMMY DUNN: Is the time, is the,
15 is the time expired, Mr. Pitts, or not?

16 GRACIE FLOYD: --- of the County.

17 MIKE PITTS: I'll be honest with you I
18 didn't start the stop watch but it -- we had fourteen
19 minutes allotted.

20 GRACIE FLOYD: So we don't know.

21 TOMMY DUNN: I'm -- I watched. It
22 started at twenty-two after is when we started on this,
23 so time has -- it -- we let it run over just a little
24 bit ago and so if a council member wants to make a
25 motion to extend the time that's up to them. But these
26 meetings are -- should be conducted and are conducted
27 by procedures. And that's Roberts Rules of Order. So
28 let's try to conduct ourselves that way. Go on about
29 it. Let's, let's don't just use it when it suits us.
30 So if somebody wants to extend the time there's a way
31 to do that. If not, let's vote.

32 TOM ALLEN: Mr. Dunn makes a good point.
33 Is there a motion to extend the time?

34 RON WILSON: Mr. Chairman.

35 TOM ALLEN: Yes. Could we -- let's have
36 a -- first of all will there be a motion to extend the
37 time?

38 RON WILSON: No, wait, wait a second.
39 My point is to that, my point is to that very issue.
40 At the time that you were adjourned the four -- the ten
41 minutes had not been used up.

42 TOMMY DUNN: Fourteen minutes.

43 RON WILSON: Fourteen. Well whatever.

44 TOMMY DUNN: Yeah, it had too.

45 RON WILSON: No, it hadn't.

46 GRACIE FLOYD: It had not.

47 RON WILSON: I mean there had only been
48 minor conversation about it.

49 TOMMY DUNN: No sir.

50 GRACIE FLOYD: Uh huh.

1 RON WILSON: And he just said he hadn't
2 started his watch.
3 TOMMY DUNN: Back.
4 RON WILSON: Well.
5 GRACIE FLOYD: He said he didn't start the
6 watch period. And the official time keeper erred. He
7 did not start the time so we don't know what time it is
8 and if -- one council member can't just come up and say
9 well it was this time. Because I can do the same thing
10 and he can do the same thing.
11 TOM ALLEN: All right. Let's -- if I
12 may, let's go ahead and see, is there a motion to
13 extend the time?
14 GRACIE FLOYD: There is no time to extend.
15 TOM ALLEN: Would you like to start the
16 whole fourteen minutes over again?
17 GRACIE FLOYD: Well that's the only way I
18 can see the error, error can be corrected. Nobody had
19 a watch. Nobody wrote down any time. So in all
20 fairness.
21 TOMMY DUNN: Mr. Chairman.
22 TOM ALLEN: Yes, sir.
23 TOMMY DUNN: I point to the legal -- to
24 the Clerk of Court. I mean Linda, to see if her or
25 Chase if any of them had any time. They got -- this is
26 recorded.
27 RON WILSON: We've been adjourned for
28 fifteen minutes. Well how can you have fourteen when
29 there's only thirty there?
30 TOM ALLEN: All right. Can I make a
31 decision on this as Chairman? Let's have five more
32 minutes. All right. Is there any discussion?
33 CINDY WILSON: Mr. Chairman, may I?
34 TOM ALLEN: Yes, ma'am.
35 CINDY WILSON: This is so confusing for a
36 lot of people who are present and then some who have
37 been here have a clear recognition of, of what's really
38 going on here. It all goes back to the meeting of the
39 evening of November 18th and council members who are
40 currently on that previous council and the previous
41 council members. There were actions taken that night
42 that have an appearance of conspiracy. There were
43 millions of dollars spent that night. Well over a
44 million. And I think that's the heart of the
45 investigation and probably a lot more. And the two
46 people who are fighting this resolution being on the
47 agenda tonight are two people who certainly have a lot
48 questions to answer. Thank you.
49 GRACIE FLOYD: Mr. Chair.
50 TOM ALLEN: Yes, ma'am.

1 GRACIE FLOYD: Mr. Chair, I think that when
2 the two council members recused themselves and left the
3 room then that was their action. I don't think that
4 just to make a quorum that they should be allowed back
5 in after recusing themselves. A recusement is a
6 recusement. You don't, you don't --
7 CINDY WILSON: Mr. Chairman.
8 TOM ALLEN: Yes.
9 GRACIE FLOYD: You don't go, you don't
10 go back and say, well I'm going to do a do-over. I'm
11 going to come back in here. You don't do it that way.
12 CINDY WILSON: Mr. Chairman, may I go
13 quickly? It's really interesting that we were told
14 that there was a quorum in the back. The only time
15 there was a quorum in the back were when two people
16 recused themselves and two people left the meeting in
17 the back.
18 GRACIE FLOYD: We'll never know.
19 TOM ALLEN: All right. Okay. I think
20 during, during the recusal the individual doesn't
21 necessarily need to leave the room. They can still
22 stay. They just can't vote.
23 GRACIE FLOYD: I was told by the ethics
24 committee that a recusal means that the people should
25 get up and leave. This is how we have done it. This
26 is the, the direction that I received from the ethics
27 commission nine years ago when I had to recuse myself
28 on a vote. I was told then that you have to get up and
29 leave the room. At one meeting our chairman recused
30 himself then participated in the discussion.
31 TOMMY DUNN: Mr. Chairman.
32 GRACIE FLOYD: And that's -- I still
33 have the floor.
34 TOMMY DUNN: Point, point of order.
35 GRACIE FLOYD: And I still have the floor.
36 TOMMY DUNN: We've got to get some
37 time on this. We're going -- we could stay here all
38 night talking about. When's the time going to start
39 and stop and get on with this?
40 TOM ALLEN: We've got another minute.
41 GRACIE FLOYD: May I go on?
42 TOM ALLEN: One more minute.
43 GRACIE FLOYD: Thank you.
44 TOM ALLEN: We're going to vote.
45 GRACIE FLOYD: Thank you. But anyway
46 your, your point is to get these people in here so
47 y'all could push this through. But I will be calling
48 the ethics committee about this. In fact I might even
49 take a trip down there because this foolishness has got
50 to stop.

1 TOM ALLEN: All right. Our five
2 minutes is up. Are we ready to vote? All those in
3 favor of Resolution 2009-62 signify by raising your
4 right hand. Let it be shown that Ms. Wilson, Mr. Dunn,
5 Mr. Allen voted in the affirmative. And Mr. Waldrep
6 and Mr. Moore recused themselves. Mr. Wilson and Ms.
7 Floyd abstaining?

8 GRACIE FLOYD: You haven't called for the
9 no vote yet.

10 TOM ALLEN: Okay. Is there a no vote?
11 All right. I'm sorry. My fault. All right. Mr.
12 Wilson and Ms. Floyd voted no. My mistake. All right.
13 Based on majority then the, the resolution passes. All
14 right we'll go on to Item (b) which is Resolution 2009-
15 63. This is a resolution authorizing and ratifying the
16 payment of legal expenses incurred by Bob Waldrep in
17 defense of a case styled Preston versus Wilson and
18 others and matters related thereto.

19 Whereas, Anderson County, Edwin E. Moore and
20 Robert E. Waldrep, Jr. are currently defendants in a
21 lawsuit styled, Jones versus Anderson County and
22 others, number 2009-CP-04-2100;

23 Whereas, the Jones lawsuit challenges, among
24 other things, the payment by Anderson County of legal
25 fees incurred by Bob Waldrep in connection with Preston
26 versus Wilson, C. A. number 2008-CP-04-2726;

27 Whereas, Mr. Waldrep incurred those legal fees
28 in defending an action brought by the former county
29 administrator for Anderson County who challenged
30 actions taken by Mr. Waldrep and Ms. Wilson as members
31 of council;

32 Whereas, Anderson County ultimately dropped
33 that lawsuit and it was dismissed by Anderson County;

34 Whereas, the payment of those legal fees was
35 approved by the interim county administrator for
36 Anderson County;

37 Whereas, the County and Messrs. Waldrep and
38 Moore are confident in their legal position and are
39 defending the Jones lawsuit with vigor;

40 Whereas, in order to reaffirm its legal
41 position in the Jones case Anderson County Council
42 desires to approve and ratify the payment by the county
43 of legal bills incurred by Mr. Waldrep in connection
44 with the Preston -- with Preston versus Wilson.

45 Now, therefore, it is hereby resolved by
46 Anderson County Council that Anderson County Council
47 hereby ratifies and approves the payment of the defense
48 costs incurred by Mr. Waldrep in the defense of Preston
49 versus Wilson. This resolution shall take effect and
50 be in force immediately upon enactment.

1 Resolved in meeting duly assembled this 18th
2 day of August, 2009.
3 Is there a motion to accept?
4 CINDY WILSON: So moved.
5 TOMMY DUNN: Second.
6 TOM ALLEN: Second?
7 TOMMY DUNN: Second.
8 TOM ALLEN: All right. Motion has been
9 made and it's been seconded. Is there any discussion
10 on this resolution?
11 GRACIE FLOYD: Yes.
12 TOM ALLEN: Mr. Wilson. Mr. Wilson.
13 RON WILSON: I want to ask our attorney,
14 are you familiar with any other case in this state
15 where a county council approved legal fees to pay a
16 member on the council?
17 MIKE PITTS: I've, I've not researched
18 that precise issue. So I'm not -- no, I'm not aware of
19 a case that I can cite you as I sit here right now.
20 No, sir. That doesn't necessarily mean that there's
21 not one, but I've not been asked ---
22 RON WILSON: And I notice these -- this
23 resolution cleverly intertwines two lawsuits. But the
24 resolution is really calling for the payment of one
25 legal fees -- one group of legal fees which is to a
26 member of this council. When -- I know there's a lot
27 of lawsuits with people on this council. I'm one of
28 them. And you know, some are paid for and some are
29 not. And I'm not -- you know, I'm not crying because
30 mine's not because I'm a big boy. When I do something,
31 I figure if I get sued I'm going to fight it with my
32 own money. I'm not going to ask the taxpayers of
33 Anderson County to bail me out. But that's what we're
34 doing here. And I don't like this. You know, this is
35 a group that was elected supposedly by a bunch of
36 people who were irritated with the way things were
37 being done and not using taxpayer money to pay for
38 stuff like this. Be it -- we do it willy nilly. And
39 we do it almost every meeting. I will not be voting
40 for this. Under any circumstances. And I'm one of
41 them that's being sued by another firm. I'll pay for
42 it and I'll fight it with my own money. I think
43 everybody should when you're sued outside of your
44 capacity. And that's what the case is here. Thank
45 you.
46 MIKE PITTS: I think the -- in the
47 Preston versus Waldrep lawsuit I believe the attorney
48 for Mr. Preston during court represented to the Judge
49 at the hearing that Mr. Waldrep was in fact being sued
50 in his official capacity.

1 GRACIE FLOYD: I didn't -- I don't ...
2 TOM ALLEN: Any other?
3 GRACIE FLOYD: Yes. I do.
4 TOM ALLEN: Ms. Floyd.
5 GRACIE FLOYD: Since Mr. Waldrep's position
6 now is almost in -- in Preston versus Williams was
7 opposed to the official position of Anderson County and
8 everybody said that Mr. Preston's buyout was a gift.
9 Is this a gift now, and a golden parachute to Mr.
10 Waldrep?

11 CINDY WILSON: Mr. Chairman, may I?

12 GRACIE FLOYD: No. No. No. I'm not
13 asking her. I have the floor. Mr. Pitts. My
14 question.

15 MIKE PITTS: No, ma'am.

16 GRACIE FLOYD: Okay. Are we expected to
17 pay Ms. Wilson's personal legal fees next? Is that
18 going to happen? Mr. Burns?

19 RUSTY BURNS: I have no evidence or
20 knowledge of that.

21 GRACIE FLOYD: Okay. All right. Well
22 it's been said several times throughout Anderson County
23 and so that's why I'm questioning. Are we going to
24 have to pony up some more money now for her fees?
25 Okay. Now, so that means if we, if we do this, so that
26 means that any lawsuit that comes to the county, all we
27 have to do is come to y'all and say I want you to pay
28 my legal fees for me because you did it for everybody
29 else. Is that what it's going to be like?

30 TOM ALLEN: I don't believe so. I
31 think if you have something that's in the, in the line
32 of your duty, what you're doing on council, then your
33 ---

34 GRACIE FLOYD: Okay. Now several of you
35 were sued outside the capacity of your county -- of
36 your council job. So you know, are we going to have to
37 work with that? Mr. Pitts, I want to ask you a
38 question, sir. You work with the Nexus's law firm
39 right?

40 MIKE PITTS: Nexsen Pruet.

41 GRACIE FLOYD: Okay. That's where you work
42 for; right?

43 MIKE PITTS: Yes, ma'am.

44 ~~Nexsen~~ GRACIE FLOYD: And when we talk about the
45 ~~Nexus~~ Pruet hiring the Palmetto ~~Institute~~ and you --
46 and we're asking you questions about that, that's like
47 a -- could -- can you defend that? Since you work for
48 the law firm at question. You know, it seems to me
49 that we need an outside legal advisor that's not from
50 the Nexus Pruet, Pruet law -- that's like asking the

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1 foxes to set rules for the chicken in the hen house.
2 You understand what I'm saying. I'm just puzzled.
3 MIKE PITTS: I don't believe there's
4 any kind of conflict there.
5 GRACIE FLOYD: You don't think so?
6 MIKE PITTS: No, ma'am.
7 TOM ALLEN: Any other discussion?
8 CINDY WILSON: Mr. Chairman.
9 TOM ALLEN: Yes, Ms. Wilson.
10 CINDY WILSON: I believe that there were
11 opinions drafted by the attorney general involving --
12 I'm trying to remember where I read it -- but there
13 have been other counties that have reimbursed a sitting
14 member of council's legal fees. There's some body of
15 knowledge there. And secondly, when Mr. Waldrep and I
16 were sued, we were originally sued in our individual
17 capacities over a matter of requesting information from
18 here in the county. But what's so bizarre about it is
19 that because of the way our laws are that was totally
20 ludicrous. And when it was pointed out in court that
21 because we asked for information if we were being sued
22 in our individual capacities that had no leg to stand
23 on. And suddenly the Judge recommended to Mr.
24 Preston's attorney, you know, suggested that maybe she
25 might want to change the structure of the case. So
26 suddenly we're being sued in our official capacities.
27 So that's how that evolved.
28 TOM ALLEN: Okay. Thank you. Any other
29 comments? If not, let's go ahead and vote on this
30 resolution. All those in favor of 2009-063 signify by
31 raising your right hand. Ms. Wilson, Mr. Dunn, Mr.
32 Allen voted in the affirmative. All those opposed.
33 Mr. Wilson, Ms. Floyd opposed. And Mr. Moore and Mr.
34 Waldrep have recused themselves.* All right. The
35 resolution passes. That concludes the -- those
36 resolutions. Mr. Moore, would you like to take back
37 over here. * Exhibits A - Attached.
38 EDDIE MOORE: Now go to Resolution 2009-
39 64.
40 RUSTY BURNS: Mr. Chairman, we have a
41 resolution. It's endorsing the Upstate Roundtable's
42 long range infrastructure planning for a five county
43 area. And basically what we're doing is that we are
44 participating in and applauding the effort and looking
45 out for the future of Anderson County especially in the
46 Saluda River basin as it affects Anderson County.
47 TOMMY DUNN: Mr. Chairman, I make the
48 motion we adopt this resolution presented to us.
49 EDDIE MOORE: Motion on the floor to
50 adopt. Do I have a second?